

LEECH (Migration) [2019] AATA 2927 (21 May 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Ronald William LEECH
VISA APPLICANT:	Ms Natroutai YENJIT
CASE NUMBER:	1718367
DIBP REFERENCE(S):	OSF2015084084
MEMBER:	David Barker
DATE:	21 May 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa: • cl.309.211 of Schedule 2 to the Regulations • cl.309.221 of Schedule 2 to the Regulations • r.2.03A

Statement made on 21 May 2019 at 10:21am

1. **CATCHWORDS**

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional) – genuine and continuing relationship – mutual commitment to shared life to exclusion of others – review applicant financially supports visa applicant – beneficiary of review applicant’s estate – friends and relatives view parties as being in a committed relationship – consistent and credible evidence – extensive documentary evidence provided – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5, 65

Migration Regulations 1994 (Cth), rr 1.09A, 1.15A, 2.03A, Schedule 2, cls 309.211, 309.221

CASES

Re MILGEA and Dhillon [1990] FCA 144

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 23 May 2017 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 15 December 2015 on the basis of her relationship with her sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy visa applicant did not satisfy cl.309.211 because they were not satisfied on the evidence that the applicant is the de facto partner, as defined under r.1.09A of the Act, of a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
5. The review applicant appeared before the Tribunal on 30 April 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant and from Ms Prachumporn Ayesha Islam, social worker.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

7. BACKGROUND

8. The visa applicant is a national of the Philippines and is 58 years of age. She has been previously married and has two adult children, born in 1984 and 1986.
9. The review applicant was born in Australia and is 81 years old. He was previously married from 1969 to 2006, with that marriage ending by divorce. There were no children from that relationship.
10. Information provided with the visa and review application indicates the parties first met in June 2010 in the town of Orange, NSW at the Downtown Motel Orange, being the home and workplace of the review applicant and a place where the visa applicant on occasion stayed. The parties claim to have made a commitment to a shared life together to the exclusion of others in November 2010.
11. The delegate's decision record, a copy of which the review applicant provided to the Tribunal, states the applicant arrived in Australia on 1 March 2002 on a Tourist visa and remained in the country on multiple bridging visas until 27 August 2015. However, it is apparent from information associated with the applications for a Combined Partner UK 820 / BS 801 visa lodged by the visa applicant on the basis of her relationship with the review applicant that she was not on Bridging visas for all of the time after her Tourist visa ceased in 2002 and had rather spent a considerable period as an unlawful noncitizen in Australia.
12. The visa applicant withdrew an application for the Combined Partner UK 820 / BS 801 visa she lodged on 26 June 2012. She was unsuccessful in relation to the subsequent

application she lodged for the same type of visa on 7 November 2013, on the basis that the Department found the Schedule 3 criteria were applicable to her application and that there were no compelling reasons to not apply these criteria.

13. The latter refusal decision was affirmed by the Migration Review Tribunal, in March 2015. The decision record in relation to that decision states that the Member who determined that review accepted that the parties had developed a strong relationship and that they provide mutual support for each other.
14. The visa applicant departed Australia 27 August 2015.
15. The applicant applied for a Visitor visa permitting to return to Australia on in May 2016. This application was refused in June 2016, with that decision being affirmed by the Tribunal, (differently constituted) in January 2017. The decision record in relation to that decision states that the Member who determined that review noted that the visa applicant is entirely reliant for her livelihood on money sent to her from Australia by the review applicant and that the parties' evidence reveal them to have a close bond.
16. In their explanation for why the delegate refused the visa applicant's application for the Subclass 309 Partner visa which is the focus of the current review before the Tribunal, they accepted the review applicant supported the visa applicant financially but was not satisfied this demonstrated the existence of joint legal or financial obligations for each other. The delegate accepted the parties had at times shared a home and workplace, but was not satisfied that this or relationship statements and photographs provided with the visa application this demonstrated that the nature of their household was that of a couple in a genuine relationship. As to the social aspects of the parties' relationship, the delegate accepted they presented to other people as being known to each other. However, the delegate was not satisfied the support letter from the review applicant's niece conveyed a view that the parties were a couple, rather than a relationship of carer and care receiver. In relation to the commitment aspects of the parties' relationship, the delegate accepted that the parties had known each other since June 2010 but was not convinced they had cohabited with each other or that they were in a genuine de facto relationship.
17. Departmental records indicate that the review applicant has departed Australia on the following dates since December 2015.

Depart Date	Arrival Date
4 July 2017	12 July 2017
10 September 2018	20 September 2018

18. The parties held a marriage ceremony in Thailand in July 2017 and registered their marriage with the Thai authorities on 18 September 2018.
19. At and prior to the hearings the review applicant provided documents to the Tribunal including, but not limited to: written statements from the review applicant, witness support declarations, financial remittance records, a copy of the review applicant's will and photographs.

CONSIDERATION OF CLAIMS AND EVIDENCE

20. The issue in the present case is whether the applicant and her sponsoring partner were in a genuine spousal or de facto relationship at the time of application and at the time of this decision.
21. In making its findings, the Tribunal has considered the documents contained in the Department and Tribunal files and oral evidence provided by the applicant, sponsor and

witness at the hearing. The Tribunal has the benefit of considerably more evidence than was available to the Department at the time of the delegate's decision.

22. The parties' oral evidence regarding the circumstances in which they met, the development of their relationship and their current living circumstances was consistent and credible. Their oral evidence during the hearing was also consistent with the very extensive documentary evidence provide with the review application. The Tribunal found the parties to be credible witnesses who gave their evidence in a calm, rational manner without embellishment.
23. In this matter, the review applicant is of an advanced age. The Tribunal, after considering his oral evidence during the hearing, was struck by the acuity of the review applicant's reasoning and is satisfied that he displayed no apparent age-related cognitive impairment and that all times he was fully oriented to time and place.
24. In *Re MILGEA and Dhillon* [1990] FCA 144, the Federal Court stated "people enter marriages with a variety of purposes and motives, hopes and anticipations, so that it is not possible to classify some purposes etc. as according to what may be described as 'community expectations'. It is not necessarily inconsistent with a genuine marriage relationship that it was entered into by one or both parties with a view to material benefit or advancement, as for example with the hope of becoming eligible to reside in a particular country. The true test, we would suggest the only test, is whether at the time at which the matter has to be decided it can be said that the parties have a mutual commitment to a shared life as husband and wife to the exclusion of others."

Whether the parties are in a spouse or de facto relationship

25. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
26. In this matter, the parties claim to have been in a genuine de facto relationship at the time of application in December 2015 and a genuine spousal relationship at the present time, that is, the time of decision in relation to the review application. As a consequence of this, the visa applicant is required to meet the criteria for a de facto relationship at the time of application, which includes, other than in some particular circumstances, she can demonstrate the parties were in a genuine de facto relationship at least 12 months prior to the time of application.

Were the parties in a de facto relationship at the time of application and a spouse relationship at the time of decision?

27. As the parties were not married to each other, at the time of application, under a marriage that is valid for the purposes of the Act, they could not, at the time of application, satisfy an essential requirement of a spouse relationship, but may meet the criteria on the basis of being in a de facto relationship as defined in s.5CB of the Act. A person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2). In forming an opinion whether they are in a de facto relationship consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.09A(3) which is attached to this decision.

28.

29. **The time of application**

30. **The financial aspects of the relationship**

31. The review applicant gave evidence that the visa applicant has been financially supported by him since their relationship commenced in late 2010. He said that he is financially independent and has been so for many years. He explained that he has operated the motel in Orange for 14 years and that before that he had managed three hotels and also spent a considerable period of time as a dairy farmer. The review applicant said the visa applicant has had no independent source of income since they started living together in 2010.

32. *Joint ownership of real estate or other major assets*

33. The available evidence would appear to demonstrate that the parties had no shared assets at the time of application and this is consistent with the oral evidence provided by the review and visa applicant.

34. *Joint liabilities*

35. The available evidence would appear to demonstrate that the parties had no shared liabilities at the time of application and this is consistent with the oral evidence provided by the review and visa applicant.

36. *The extent of any pooling of financial resources, especially in relation to major financial commitments?*

37. There is no evidence to support a contention that the parties were at the time of application pooling their financial resources in relation to any major financial commitments.

38. *Whether one person in the relationship owes any legal obligation in respect of the other?*

39. The Tribunal has reviewed a copy of the review applicant's will and is satisfied he has identified the visa applicant as the beneficiary of his estate.

40. *The basis of any sharing of day to day household expenses*

41. The parties gave consistent evidence that since the time of application the review applicant has continued to financially support the visa applicant since she returned to her home country in August 2015. The Tribunal has reviewed the evidence of funds remitted to the visa applicant from Australia by the review applicant accepts this claim. The Tribunal accepts that prior to her departure from Australia data household expenses were also funded by the review applicant.

42. *Assessment of the financial aspects of the parties' relationship*

43. The financial records and provided with the review application are consistent with the applicant's claims. The Tribunal accepts that around the time of application the visa applicant was financially reliant on the review applicant and whilst as a consequence, there is no substantive evidence of jointly owned assets, liabilities or of the pooling of funds towards major financial commitments from that period, the Tribunal considers this to be more an indicator of how income flowed into their household, rather than an indicator the parties' relationship was not at that time genuine.

44. The Tribunal has considered all of the available evidence and is satisfied that the financial aspects of the parties' relationship at the time of application were consistent with those of couple in a genuine and continuing relationship, where there was only one person earning an income.
45. **The nature of the household**
46. *Joint responsibility for the care and support of children*
47. The parties make no claim to have had at any stage shared responsibility for the care and support of children.
48. *The living arrangements of the persons*
49. The Tribunal accepts that the parties lived together in the review applicant's motel in Orange, NSW from in or around November 2010 and up until the visa applicant's departure from Australia in August 2015. The Tribunal has noted the delegate's concern as to whether the household arrangements of the parties during that period were indicative of a couple in a genuine relationship or of the situation where one of the parties was caring for the other. The delegate does not make it clear who they would suggest was the carer and who was the care receiver. Presumably it could have worked either way as the review applicant is of an advanced age and the delegate may have assumed he is of frail health. The Tribunal having taken oral evidence from the review applicant has made no such assumption as he presented as hale and hearty in his physical appearance and as previously discussed in this decision, continues to have a sharp mind. From the documents available to the Tribunal, which were presumably available to the delegate, it is apparent that the visa applicant has had a complex past and has experienced alcohol dependency and significant dental health problems in the period the parties have known each other. In any event, the Tribunal is not satisfied on what grounds the living arrangements in a household in which the two members of the household are providing each other with support appropriate to their respective needs would necessarily be construed as an indicator that those two people were not in a genuine relationship.
50. *Sharing of the responsibility for housework*
51. The parties gave consistent evidence that the visa applicant was not an employee at the review applicant's motel business in Orange, NSW. They have both indicated the review applicant focused upon running the motel business whilst the visa applicant took primary responsibility for domestic tasks within their living quarters.
52. *Assessment of the nature of the parties' household arrangements*
53. Given the respective ages of the parties and their respective cultural backgrounds, I am satisfied there is nothing particularly unusual or untoward about the parties' household arrangements in or around the time of application. The review applicant was clearly in a stronger financial situation than the visa applicant and was accordingly in a position to take her into his household without an expectation she did other than take primary responsibility for housework and be his life partner. The visa applicant, due to the extensive period she was an unlawful noncitizen in Australia without regular employment or apparent stability in her life, appears to have taken up the opportunity to improve her circumstances by commencing a relationship and sharing a household with the review applicant. The Tribunal does not see that the circumstances outlined in this paragraph exclude the establishment of household arrangements that were consistent, around the time of application, of two people in a genuine relationship. At the specific time of application the visa applicant had returned to Thailand, but since that time both she and the review applicant have sought to get a visa

allowing her to return to the review applicant's household in Australia and for this reason the Tribunal is satisfied that they have no intention to live separately on a permanent basis.

54. The social aspects of the relationship

55. Whether the persons, at the time of application, represented themselves to other people as being in a de facto relationship with each other

56. The review applicant's last will and testament identifies the visa applicant as his partner and as the beneficiary of his estate. He prepared this will in February 2015.

57. The opinion of the parties' friends and acquaintances about the nature of the relationship

58. The Tribunal has reviewed witness support statements provided with the visa application. The Tribunal has noted the delegate's concern the declarations lacked substance and that the declaration of the review applicant's niece casts some doubt as to the nature of the parties' relationship. The Tribunal has reviewed the witness support letters from Mr Michael Layton, Mr Warwick Matchett, Mr Melville Johnston and Ms Yvonne Johnston and has not reached the same conclusion. The Tribunal considers these witnesses to have provided credible reasons upon which they have attested to the genuine nature of the parties' relationship and the Tribunal has placed weight on this evidence.

59. With respect to the support letter provided by the review applicant's niece, Mrs Louise Beamish, who is a Salvation Army Minister, this letter test to the supportive nature of the parties' relationship but does not suggest it is a carer / care receiver relationship and the Tribunal is satisfied Mrs Beamish has provided a view upon the parties relationship that should have some weight accorded to it.

60. The basis on which the persons plan and undertake joint social activities

61. The review applicant gave consistent evidence that he is a person who is focused upon running his motel business and that remaining actively involved in this enterprise is more or less his recipe for maintaining his physical and cognitive health. He said that a consequence of this was that he and the visa applicant spent most of their time around the motel and that the business was a focus of their lives. He said that the sort of social activity they planned and undertook together were weekends they would have in Sydney, where they would stay at the casino or a nice hotel and enjoy a few days of comfort. The review applicant indicated this has been his pattern for many years and was part of the busy lifestyle that he had maintained since his time as a dairy farmer.

62. Assessment of the social aspects of the parties' relationship

63. In the view of the Tribunal the nature of the social aspects of the parties' relationship provide support to the contention that they were at the time of application in a genuine and continuing de facto relationship. In forming this view the Tribunal has placed weight on the indicators that at the time of application there is evidence that friends and relatives of the parties viewed the parties as a couple in a committed relationship and that they had until the visa applicant's departure from Australia planned and undertaken activities together in the form of weekends in Sydney. The Tribunal also considers the review applicant's explanation for the focus that running the business has in his lifestyle to be credible and that this provides a reasonable account for why there was limited other evidence of the parties travelling or undertaking a range of other social activities together.

64. The nature of the persons' commitment to each other

65. The Tribunal accepts the parties' claims that their previous marriages broke down years before their relationship commenced in 2010.

66. The Tribunal considers the parties description of the circumstances whereby they met and their relationship developed to be plausible. The review applicant described himself as a man who maintained a busy and active life, which was focussed around running his motel business. He explained that he has no children and few surviving close relatives and that as his relationship developed with the visa applicant, he wanted to help her improve her circumstances. He said that he enjoyed the companionship being back in a relationship brought into his life.

67. *The duration of the relationship*

68. The Tribunal accepts that at the time of application the parties had been in a relationship for around four years and has placed some weight on this factor.

69. *The degree of companionship and emotional support that the persons draw from each other*

70. In the view of the Tribunal, the information available from the current application and also from previous visa applications demonstrate that there was a significant degree of companionship and emotional support for each other in the parties' relationship from when they report it commencing in November 2010. The visa applicant is reported to have had considerable support needs, in relation to which the visa applicant provided assistance. Their relationship has been described as close and supportive by a range of other decision makers who have assessed the visa applicant's eligibility for other types of visas and the Tribunal considers those views consistent with the evidence that is available in relation to the current visa application. The review applicant gave credible evidence as to the value of the companionship that being in relationship with the visa applicant, rather than continuing to live as a single man, brought into his life.

71. *Whether the persons see the relationship as a long term one*

72. The parties gave consistent evidence they see their relationship as long term and did so at the time of application for the Subclass 309 Partner visa.

73. *Assessment of the nature of the persons' commitment to each other*

74. The Tribunal has placed weight on this aspect of the parties' relationship and views it as an indicator that at the time of application in December 2010, the parties were in a genuine and continuing de facto relationship.

75. **Conclusions on time of application criteria**

76. The Tribunal notes there is no evidence to suggest either of the parties were at the time of application in a relationship with a third party. There is also no evidence to establish the parties were not, up until the visa applicant's departure from Australia in August 2015, living together with household arrangements indicative of a couple in a relationship with each other. It is apparent the visa applicant has a poor migration history and that she maintained over a number of years endeavours to remain in Australia. Notwithstanding this, I consider the financial, household, commitment and social aspects of the parties' relationship at the time of application were indicative of a couple in a de facto relationship.

77. Having regard to all the circumstances of this relationship, the Tribunal is satisfied that the parties at the time of application had a mutual commitment to a shared life together to the

exclusion of all others. The Tribunal is satisfied that the relationship between them was in or around December 2010 genuine and continuing. The Tribunal finds the parties were not lived separately and apart on a permanent basis and that the parties are not related by family.

78. On the basis of the above the Tribunal is satisfied that the requirements of s.5CB(2) were met at the time of the application.

Are the additional criteria for a de facto relationship met?

79. Persons lodging an application for a Partner visa on the basis of being in a de facto relationship must also meet the additional criteria in r.2.03A. These are: that the couple are both at least 18 years of age; and with limited exceptions, that the applicant has been in the de facto relationship for at least the period of 12 months ending immediately before the date of the application, unless he or she can establish compelling and compassionate circumstances for the grant of the visa. The requirement that the relationship existed for 12 months prior to the application does not apply in certain circumstances where the sponsor is or was a humanitarian visa holder, or for applications made on or after 9 November 2009, where the de facto relationship has been registered under a relevant State or Territory law: r.2.03(4), (5).
80. Having regard to all the circumstances of this relationship, the Tribunal is satisfied that the parties were in a committed, genuine de facto relationship from November 2010 and they are both manifestly over the age of 18 years. Accordingly, the Tribunal is satisfied the additional criteria in r.2.03A are met.

81. The time of decision

82. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

83. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship.
84. The couple registered their marriage with the Thai government authorities 18 September 2018. A translated copy of the certificate of marriage was submitted to the Tribunal. The Department and Tribunal's files also includes a copy of a divorce order in respect to the visa and review applicant's previous marriages.
85. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

86. Financial aspects of the relationship

87. There is documentary evidence, which has been provided by the review applicant, to support his claim to have remitted funds to the visa applicant on a regular basis since she returned to Thailand in August 2015. The Tribunal accepts this claim and the associated claim that the visa applicant has no alternate source of funds to meet her regular living expenses in her home country. Apart from this, the available evidence does not show a different picture than that was present in or around the time of application in December 2010, in that the parties continue to have no shared assets of any note, no shared liabilities or new legal obligations with respect of each other.

88. *Nature of the Household*

89. In respect of the nature of the household, the Tribunal notes that it is difficult to assess these criteria at the present time, as the review applicant lives in Australia, while the visa applicant lives in Thailand. The Tribunal is however satisfied that during the limited periods they have spent together in Thailand since 2010, the parties have resided together and that the review applicant maintains living arrangements in orange, motel that are suitable for the visa applicant to move into if she is able to return to Australia.

90. *Social aspects of the relationship*

91. The evidence provided with the review applicant includes photographs taken during the review applicants two trips to Thailand in 2017 and 2018. These include photographs taken at the parties wedding ceremony, which show the parties together with members of the visa applicant's family and also together with friends of the review applicant. .

92. *Commitment aspects of the relationship*

93. With respect to the parties' commitment to their relationship, they have maintained consistent endeavours to be reunited since the visa applicant was required to depart from Australia in 2010. The tribunal accepts the claim they communicate regularly by phone and electronic means.
94. The evidence provided by Ms Islam was in the view of the Tribunal credible and she attested to both the genuine nature of the parties' relationship and also as to the extent to which the visa applicant expresses support to the visa applicant and worries that she is not able to attend to his day to day needs. The review applicant, in the view of the Tribunal also gave quite compelling evidence as to his wish to be reunited with the visa applicant. The duration of the parties' relationship now extends well over seven years and there is no indication the review and visa applicant do not view their relationship as long term.

95. **Conclusion on spouse and de facto criteria**

96. Having regard to all the circumstances of this relationship, the Tribunal is satisfied that the parties have at the time of this decision a mutual commitment to a shared life together to the exclusion of all others. The Tribunal is satisfied that the relationship between them is genuine and continuing. The Tribunal finds the parties wish to live together and have not lived separately and apart on a permanent basis since in or around late 2010.
97. The Tribunal is satisfied that the requirements of s.5F are met at the time of the decision.

98. **CONCLUSION**

99. As a consequence of its consideration of the evidence before it, the Tribunal is satisfied that the requirements of s.5CB(2) are met at the time of the application and is satisfied that the requirements of s.5F are met at the time of the decision.

100. Therefore, the visa applicant meets cl.309.211 and cl.309.221.
101. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

102. The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
- cl.309.211 of Schedule 2 to the Regulations
 - cl.309.221 of Schedule 2 to the Regulations
 - r.2.03A

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.
 - *Note 1* See regulation 2.03A for the prescribed criteria applicable to de facto partners.
 - *Note 2* The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.
 - Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits *the* regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or

- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).